IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7406 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE R.P.DHOLAKIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

JASHUBHAI KUBERBHAI CHOWDHARY

Versus

STATE OF GUJARAT

Appearance:

MR MM TIRMIZI for Petitioner

MR HN SOMPURA for Respondent No-State.

MR PS PATEL for Respondent No. 2

CORAM : MR.JUSTICE R.P.DHOLAKIA

Date of decision: 10/08/2000

ORAL JUDGEMENT

The petitioner has been detained under the provisions of Gujarat Prevention of Anti-Social Activities Act, 1985 (hereinafter referred to as " the Act of 1985") by the order dated 26-10-99 passed by the Police Commissioner, Ahmedabad city, and he has been declared as dangerous person.

2. It is a settled principles of law that in order

to bring a person within the expression " dangerous person" as defined in clause (c) of section 2 of the Gujarat Prevention of Anti-social Activities Act, 1985, (for short " the Act of 1985 "), there should be positive materials to indicate that such person is habitual of committing or attempting to commit or abetting the commission of offences which are punishable under Chapter XVI or XVII of Chapter V of the Arms Act and that single or isolated act falling under the said Chapters cannot be characterised as a habitual acts as envisaged in section 2 (c) of the PASA Act. Further, besides a person being a dangerous person, his activities should also fall within the ambit of expression " public order". A distinction has to be drawn between the " law and order " and " maintenance of public order ". A reference may be made of M.J.Shaikh v. M.M.Mehta, Comissioner of Police & Ors. reported in 1995 (2) GLR 1268.

3. The detaining authority took into consideration three offences registered against the petitioner, so also the statements of two anonymous witnesses. The detaining authority considered the activities of the detenu as that of a bootlegger as defined under the PASA Act and observed that the petitioner is required to be immediately prevented from pursuing his activities, which are detrimental to public order. The authority also considered the possibility of resorting to less drastic remedies and came to conclusion that detention under PASA Act is the only remedy that can be resorted to.

4. Learned advocate for the petitioner has restricted his arguments only on the point that there is improper exercise of powers under Section 9 (2) of the PASA Act. He has drawn drawn attention of this Court to the fact that the whole exercise done by the detaining authority in a day i.e. the whole bunch of the papers were submitted before the detaining authority and he verified the statements of anonymous witnesses on the same day and the detention order passed on the very day. The authority, therefore, had no time to undertake the exercise of verifying the correctness and genuineness of the fear expressed by the witnesses qua the detenu. For that he has relied upon the judgment reported in 1993 (2) GLR 1659 wherein it is held as under :

> " There is a provision under section 9 (2) carved out on the basis of Article 22 (5) of the Constitution which provides that nothing in sub-section (1) shall require the authority making such order to disclose facts which it considers to be against the public interest to

> disclose. Therefore, it is the duty of the detaining authority to strike a balance as stated above, that in the public interest, the names and addresses of the witnesses could not be disclosed. This should not be treated as an idle formality as it affects the public interest on the one hand and the right of the detenu on the other. When that is so, the detaining authority is expected to do some exercise before actually exercising the privilege under section 9 (2) of PASA. Looking to the facts and circumstances of the case, it is clear, as stated hereinbefore, that the verified statements were also placed before the detaining authority and there was no sufficient time for the detaining authority to examine the possibility of exercising the power under section 9 (2), as the proposal was made on 16th October, 1992 and the order of detention was passed on the following day i.e.,17th October, 1992, nor is there any material to show as to how he examined the necessity of exercising the power under section 9 (2). Under the circumstances, in our view, it is a wrong exercise of power under section 9 (2) which has affected the detenu's right of making an effective representation under Article 22 (5) of the Constitution of India and therefore, the continued detention of the detenu is bad and illegal and the impugned detention order is required to be quashed and set aside ".

5. Learned counsel for the petitioner submitted further that the offences registered against the detenu do not indicate any disturbance to public order and, therefore, the subjective satisfaction recorded by the detaining authority regarding the activities of the detenu being detrimental to public order is without any basis and the petition may, therefore, be allowed.

6. Mr. H.N.Sompura ,learned Assistant Government Pleader, has opposed this petition on the ground that merely the authority has acted promptly does not mean that it has not applied mind or it has not verified the statements in the manner in which the same are required to be verified as per Section 9 (2) of the Act.

7. Considering rival side contentions, it appears that the statements of anonymous witnesses have been recorded on 25-10-99. The same have been verified by the the detaining authority on 26-10-99 and the order is passed on that very day. So far as the statements of anonymous witnesses are concerned, it may be noted that

the detaining authority completed the whole exercise of passing of detention order including verification of the statements of anonymous witnesses and also passed the order of detention on the same day, but the same is not permitted in view of the decision rendered by this Court reported in 1993 (2) GLR 1659 (Supra). So the points raised by the petitioner are fully covered by the decision reported in 1993 (2) GLR 1659, and therefore, the petitioner is able to succeed only on that point. Therefore, learned counsel for the petitioner has restricted his arguments only on that point and not pressed other points.

8. In view of the aforesaid discussion, the petition is allowed. The impugned order of detention dated 26-10-99 passed against the detenu is hereby quashed. The petitioner- detenu Jashubhai Kuberbhai Chowdhry Sheikh is hereby ordered to be set at liberty forthwith, if not required to be detained in any other case. Rule is made absolute accordingly with no order as to costs.

(R.P.Dholakia, J.)

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